

# SAN DIEGO CITYBEAT

Civil rights

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## City slow to act on the Patriot Act

Its chief author now says parts of it are indefensible. Another section that required Middle Eastern men and boys to register repeatedly with U.S. officials has been scrapped.

These can't be fun days for the Bush administration's chief of paranoia, Attorney General John Ashcroft, and his doctrine of civil destruction, otherwise known as the Patriot Act, the anti-terrorism legislation ramrodded through Congress following the attacks of Sept. 11, 2001.

But for civil libertarians everywhere, there's a growing buzz that the Patriot Act can be tamed and that its tougher, less-forgiving successor, dubbed Patriot Act II, is dead on arrival in the hallowed halls of Washington, D.C.

Still, there is much work to be done. The San Diego City Council, for one, could apply some pressure to Mayor Dick Murphy to docket for council consideration a civil-liberties resolution passed by the city's Human Relations Commission in July.

So far, 219 cities and communities across the country have adopted laws creating so-called "civil liberties safe zones" where local law enforcement are discouraged or outright banned from assisting the federal government's shaky efforts to weed out terrorists, according to the Massachusetts-based Bill of Rights Defense Committee.

Murphy's office did not respond to a request by *CityBeat* to explain the four-month delay in docketing the resolution, but speculation suggests one of two things—a Republican mayor's discomfort in challenging a sitting president's war-waging methods with an election cycle under way, or a Republican mayor who's just too timid to bring up the matter, period.

"People have to stand up on behalf of liberties at whatever level they're at, whether it's a city council or a PTA or a soccer team," said Rep. Bob Filner, one of only two dozen members of Congress who voted against the Patriot Act two years ago. If someone at City Hall has clamped down on opposing the Patriot Act, he said, "the fear is evidence that something's going wrong here."

Filner will be on hand as the keynote speaker Dec. 10 for another Patriot Act forum sponsored by the San Diego Bill of Rights Defense Committee. The two-hour discussion, to be held from 7 to 9 p.m. at Jacob Center (5160 Federal Blvd. in City Heights), is titled "How the Patriot Act Damages Your Constitutional Rights—and How to Fix It" and will feature a half-dozen other speakers who will spell out why national security concerns need not trample the Bill of Rights.

"Terrorism is a real threat. You can't deny that," Filner told *CityBeat*. "But the question is, do you fight it rationally and with democratic support as opposed to doing away with dissent. Just because you're opposed to something doesn't mean you're not a patriot. And there's a danger that dissent will lead to imprisonment."

Filner said he believes the Patriot Act evolved as an "overreaction" to the tragedy of Sept. 11. Like many people before him, he points out that a country that freely surrenders its civil liberties is a country that becomes submissive to terrorists.

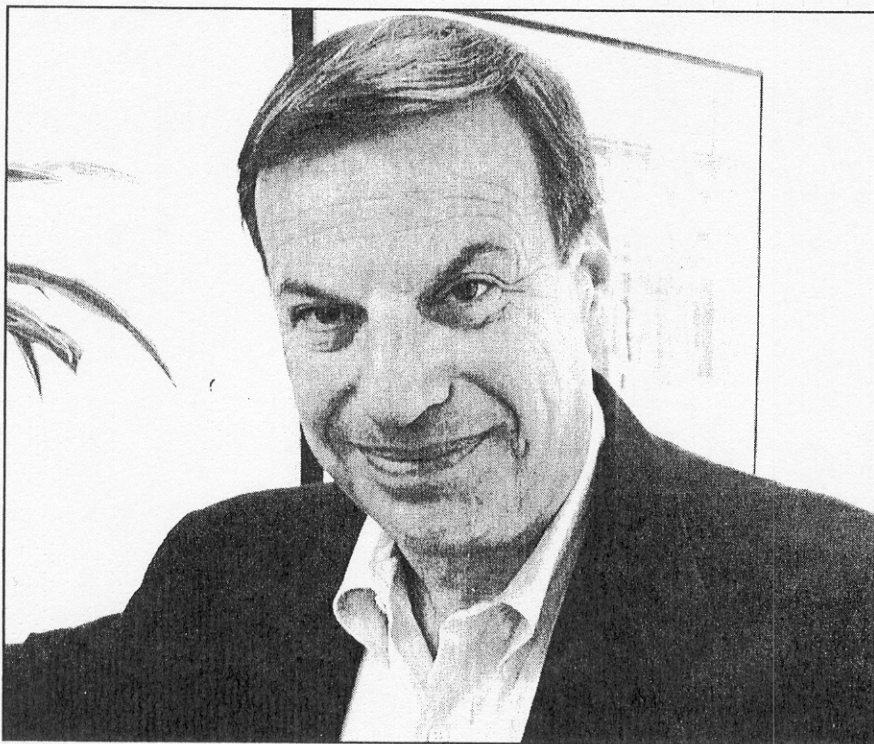


Photo: David Roland

Congressman Bob Filner is no fan of the Patriot Act.

"In this case, I think the Patriot Act went way too far," he said. The burden of proof, for example, that permits law-enforcement agents to wiretap a suspect, he explained, is "so flimsy that if you talk to me, and I have a cousin who once worked as an intern for somebody who gave money to someone in Iraq who then hired someone who turned out to be a terrorist, they can tap your phone."

"There's no real probable cause for their ability to infringe on our liberties. They're allowed to look at books we took out of the library, videos we rented—all that is now legal to be looked at. Not that any of us has anything to hide, but we're proud of our privacy and our liberty."

Dale Kelly Bankhead, public affairs director for the local ACLU and the San Diego Bill of Rights Defense Committee, said her group has noticed in recent debates with folks from the local U.S. Attorney's office a strategic change in discussing the Patriot Act.

"Now the approach is apparently to say that we in fact are misrepresenting what Patriot does, even though the facts really speak for themselves," she said. "They are so anxious to hang on to these powers that they are misleading the public. Why? Because these are things that the federal government and John Ashcroft in particular have wanted for a very long time but Congress rejected because they were unconstitutional."

"That's why it's important for communities to continue to tell members of Congress and to make public statements that this kind of stuff is just not OK."

Bankhead said most major cities in California—except San Diego—have adopted or plan to address some form of legislation that makes it more difficult for the federal government to enlist the help of local police officers to do its terrorism-related snooping. While some laws merely make suggestions, some cities, like Arcata, have made it outright illegal for local authorities to participate in Patriot games.

And these aren't just left-leaning towns and cities. "What we have seen is that, in terms of the cities that have adopted resolutions, they really cross the political spectrum," she said. "The state of Alaska adopted a resolution, for goodness sake, and that is not what is ordinarily considered a lefty place. This is not a partisan issue."

This week, the *Los Angeles Times* reported that Viet Dinh, the former top man in the Justice Department's Office of Legal Policy and a chief author of the Patriot Act, has discussed the case of Jose Padilla in terms that will not please his former employer. Padilla, a former gang-banger from Brooklyn, has spent the last year and a half in a military brig, labeled an "enemy combatant" and accused of plotting the detonation of a so-called dirty bomb.

Dinh—a Georgetown University Law Center professor who has vociferously defended the Department of Justice's efforts to root out terrorists, despite claims of civil-rights abuses against immigrants—suggested the government could have difficulty legally defending its handling of the Padilla case.

"The president is owed significant deference as to when and how and what kind of process the person designated an enemy combatant is entitled to," Dinh told the *Times*. "But I do not think the Supreme Court would defer to the president when there is nothing to defer to. There must be an actual process or discernible set of procedures to determine how they will be treated."

Filner said he lived through the "red scare" of the McCarthy era and saw "people destroyed just because they had a different viewpoint." He's also savvy enough to know that if terrorists attack on U.S. soil again, further infringements on liberties will follow.

"I think we have to fight terrorism," he said. "We have to be vigilant, but we should not allow that vigilance to be translated into an attack on all of what America has always stood for."

—John R. Lamb